

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 107 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJNIKANT KANTILAL SHROFF

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 107 of 1996
MR AJ PATEL for Petitioner
MR.DC DAVE, AGP for Respondent No. 1
MR CB KAUSHAL for Respondent No. 2, 3

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 26/02/96

ORAL JUDGEMENT

1. At the request of Learned counsel for the petitioner District Collector, Ahmedabad is added as respondent No.4. Learned Asst. Government Pleader appearing for the State who has been served through the Collector is directed to accept notice on behalf of the Collector as well.

2. This special civil application is directed against the

order of the Collector and District Magistrate, Ahmedabad dated 21.7.1994 as affirmed by the State Government on appeal by its order dated 21.10.1995 rejecting the application of the petitioner for obtaining previous sanction to transfer his property situated in Town Planning Scheme No.3, Paldi, Ahmedabad which had been declared as disturbed area under the provisions of the Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991, which declared as disturbed area when the application was made and continues to be a disturbed area within the meaning of Section 3 of the Act.

3. The petitioner intending to transfer his plot situated in the aforesaid scheme made an application under Section 5(3) of the Act on 9.6.1993, which was rejected by the Collector ultimately on 21.7.1994 after the matter was remanded earlier to him notwithstanding the Collector finding in favour of the petitioner that the intended transfer is by the free consent of the parties and is for consideration which is fair value of the property on the date of transfer. The order has been affirmed by the State Government on appeal on 21.10.95. The rejection is on the plea that the intended transfer is not in the public interest.

4. Learned counsel for the petitioner contends that under the scheme of the Act, the transfers which had already been made prior to the date before declaration of disturbed area have been declared null and void and transfers after the date of declaration have been prohibited. However, such declaration of nullity and prohibition does not apply in the cases where the transfer is by free consent of the parties and is for consideration which is fair market value of the property in question. Obviously, the scheme is for protecting the owners from the damages which may be caused on account of panic transfers of the property when riots took place in the area but is certainly not intended to affect the freedom of dealing in property which otherwise vests in the owner of the property. The competent authority having found in favour of the petitioner that the intended transfer was for fair value of the market value of the property and was also by free consent of the intending transferor and transferee was bound to accord sanction for such transfer. He pointed out that even in cases of transfer which had already taken place before the declaration of the disturbed areas and had been declared to be null and void under Section 4(1) are deemed to be valid from the date of transfer on a finding being reached by the Collector on an application being made, that such transfer had been by free consent of the transferor and transferee and was for a fair value. That being so, when the two conditions are shown to exist in terms of clause (b) of subsection (3) of

Section 5, the Collector is under an obligation to accord previous sanction to the intended transaction. He seeks support from the order of this court in Special Civil Application No.104 of 1996 decided on 26.2.1996.

5. Learned Assistant Government Pleader joins the issue.

6. Having carefully considered the rival contentions, in my opinion, the petition must succeed. It would be appropriate to quote Section 4 and Section 5 for the present purposes.

4(1) Notwithstanding anything contained in any other law for the time being in force but subject to subsections (2) and (3) all transfers of immovable property situated in a disturbed area made during the specified period shall be null and void, with effect from the date of such transfer."

(2)(a) Any transferor or transferee in relation to a transfer of immovable property affected by the provisions of subsection (1) may, within the prescribed period and in the prescribed form, make an application to the Collector for a declaration that the transfer of immovable property was made by free consent of the transferor and the transferee and for a fair value of the immovable property so transferred.

(b) On receipt of such application, the Collector shall hold a formal inquiry in the manner prescribed by the Bombay Land Revenue Code, 1879, and after giving an opportunity to the transferor and the transferee to be heard and after considering any evidence produced, decide whether the transfer of immovable property was made by free consent of the transferor and the transferee and for a fair value of the immovable property and accordingly -

(i) reject the application; or

(ii) by an order in writing make a declaration that the transfer of the immovable property was made by free consent of the transferor and the transferee and for a fair value of the immovable property so transferred.

(3) Upon a declaration made under subclause (ii) of clause (b) of subsection (2) in respect of any transfer of immovable property, such transfer of immovable property shall, with effect from the date of such transfer, be deemed to be valid for the purposes

of this Act.

Explanation - For the purposes of this section and section 5, the word "transfer" in relation to an immovable property means a transfer by way of sale, gift, exchange, lease or otherwise and includes allowing the possession of such property to be taken or retained in part performance of contract of the nature referred to in section 53A of the Transfer of Property Act, 1882.

5(1) Notwithstanding anything contained in any other law for the time being in force but subject to provisions of subsection (3), no immovable property situated in a disturbed area shall, during the period of subsistence of the notification issued under subsection (1) of Section 3 declaring such area to be the disturbed area, be transferred except with the previous sanction of the Collector.

(2) Any transfer of immovable property made in contravention of subsection (1) shall be null and void.

(3) (a) Any person intending to transfer immovable property situated in a disturbed area may, within the prescribed period and in the prescribed form, make an application to the Collector for obtaining previous sanction under subsection 91).

(b) On receipt of such application the collector shall hold a formal inquiry in the manner provided by the Bombay Land Revenue Code, 1879, and after giving an opportunity to the applicant to be heard and after considering any evidence produced, decide whether the transfer of immovable property is proposed to be made by free consent of the persons intending to be the transferor and the transferee and for a fair value of the immovable property proposed to be transferred and accordingly -

(i) reject the application; or

(ii) by an order in writing give previous sanction to the proposed transfer of immovable property."

7. It is to be noticed that Section 4 and Section 5 both are part of the scheme which become operative in respect of any area which is declared as disturbed area under Section 3 of the Act, affecting the transactions which had already taken place during the period for which area has been declared to be

disturbed area. Respective provisions govern the case depending on the fact whether transaction had taken place prior to such declaration, or is intended to take place after such declaration. The main ingredient of the two provisions are that in the first instance the transaction which had already taken place is declared to be null and void and future transactions of the immovable property during the period of the continuance of the declaration are prohibited. However, a room has been made to soften the rigour of the prohibition where the transfer of the immovable parties is by the free consent of the parties and is for fair consideration which can be considered to be the market value of the property. The enquiry into these two facts is left to the Collector on an application being made in this behalf in either of the circumstances and finding in favour of the applicant on those two aspects, the declaration of nullity is turned into declaration of validity and so also on findings in favour of the applicant in respect of these two aspects in the case of intending transfers, the Collector is required to grant previous sanction.

8. This view accords with the interpretation of Section 4 which has been made in Special Civil Application No.104 of 1996 decided on 26.2.1996.

9. The petition accordingly succeeds. The order of the Collector dated 21.7.1994 as affirmed by the State Government on 21.10.1995 to the extent it rejects the application for grant of previous sanction is quashed and the Collector respondent No.4 is directed to make necessary order in terms with the finding recorded by him in his order dated 21.7.1994 about the free consent of the parties to the intended transfer and the fair market value of the property in question within a period of one week from the date of service of this writ.

10. Rule made absolute. No order as to costs. Direct service permitted.

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